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Supreme Court, U.S.
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No. 01-546

In the Supreme Court of the United States

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al.,
Petitioners,

v.

TAYLOR MILK COMPANY,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Section 8(b)(4)(ii)(B) of the National Labor Relations Act ("NLRA"), as amended, 29 U.S.C. § 158(b)(4)(ii)(B) makes it unlawful for a labor organization "to threaten, coerce, or restrain any person" where an object of such conduct is to force or require any person "to cease doing business with any other person ...." *Id.* Section 303 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 187, makes it unlawful for a labor organization to engage in any activity that violates the proscriptions codified in Section 8(b)(4) and creates for "[w]hoever shall be injured in his business or property by reason of" such activity a cause of action for damages. 29 U.S.C. § 187(b).

The United States Court of Appeals for the Third Circuit, affirming a judgment of liability under Section 303 entered by the United States District Court for the Western District of Pennsylvania, determined that the International Brotherhood of Teamsters and its Dairy Conference - USA and Canada ("IBT") engaged in coercive secondary conduct within the meaning of Section 8(b)(4) of the NLRA, with the object of forcing Borden, Inc. to cease doing business with Respondent Taylor Milk Company.

The issue presented by the Petition is simply whether the facts as found by the trial court, and affirmed by the Court of Appeals, amount to "coercion" within the meaning of the NLRA.

CORPORATE DISCLOSURE STATEMENT

Respondent Taylor Milk Company ("TMC") is a privately held Pennsylvania corporation. It has no parent corporations and no publicly traded company owns more than 10% of TMC's stock.

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COUNTERSTATEMENT OF THE CASE

In 1995, Taylor Milk Company entered into an agreement to purchase Borden, Inc.'s Youngstown, Ohio dairy plant and operations. At the time, TMC operated a dairy processing and distribution plant in Ambridge, Pennsylvania, about 40 miles from Borden's Youngstown facility. TMC's plant was antiquated and operating at beyond its efficient capacity. The Borden plant, although much newer, was underutilized and was slated to be closed by Borden if no buyer was found for it. The opportunity to purchase the Borden plant together with its existing customer base presented TMC with a unique opportunity to upgrade its physical plant and to increase its sales volume and customer base; it was a "once in a lifetime deal." Appendix, at 3a; 20a.

TMC executed a letter of intent with Borden, paid a $50,000 nonrefundable deposit to Borden for an exclusive option to purchase the Youngstown plant, and ultimately executed a definitive asset purchase agreement for the Youngstown plant. The only condition imposed by TMC's lenders on the financing for the deal was that the Borden operations have five year labor agreements in place to which TMC could succeed. *Id.* at 3a-4a; 20a-21a.

TMC's operational plan after its purchase of the Youngstown facility was to relocate much of the production performed in Ambridge to the larger, more efficient Borden plant. The Ambridge facility would have become a warehouse and distribution center for product manufactured in Youngstown. The combination of operations would have resulted in the elimination of some jobs in both facilities, with 43 of those coming from Ambridge. *Id.* at 4a; 20a.

TMC's employees in Ambridge were represented for purposes of collective bargaining by Teamsters Local 205, which was bitterly opposed to the transaction. Upon learning of TMC's intentions in respect of the Youngstown plant, and even before TMC informed it of those intentions, Local 205's leadership solicited the support of the Chairman of IBT's Dairy Conference in the ultimately successful effort to prevent Borden from negotiating new labor agreements with the Youngstown employees, thereby preventing Borden from selling the plant to TMC. The IBT, in other words, set out to coerce Borden to cease doing business with Taylor Milk because of Local 205's objections to TMC's acquisition of the Youngstown plant. *Id.* at 4a; 21a-22a.

Teamsters Local 377 was the union representing the Borden employees, and it supported TMC's purchase of the Youngstown plant in order to keep it operating and preserve jobs. The courts below both concluded that, but for the unlawful interference with the bargaining process by the IBT, Local 377 would have entered into labor agreements with Borden acceptable to TMC's lenders, thereby satisfying the condition precedent to TMC's purchase of the Youngstown plant. *Id.* at 6a; 32-33a.

The District Court found that the IBT engaged in the following conduct, the object of which was to coerce Borden, Inc. (the secondary employer) to cease doing business with the primary employer, TMC:

- Even before TMC announced its intentions to Local 205, that Local had solicited and received assurance from the IBT that it could "follow its work" to Youngstown. Appendix, 22a.

- Local 205 members traveled to Youngstown to demonstrate, and informed the employees there that "Local 205 was going to took [sic] over." *Id.*

- At a meeting among representatives of TMC, Borden and Local 205, the IBT's representative (the Chairman of its Dairy Conference) told the Borden representatives that he would not permit Borden to sell the Youngstown plant to TMC and demanded that Borden "sell it to somebody else," thereby signaling the Union's secondary motive. *Id.* at 23a.

- The IBT representative at this same meeting announced that he was "invoking Article 12, Section 2 of the IBT Constitution and giving [collective bargaining] jurisdiction of the Youngstown Borden plant to Local 205." He continued by stating that any negotiations at Youngstown with Borden would be conducted by him in conjunction with Local 205's president, in derogation of Local 377's right to represent the Youngstown employees. *Id.* The purported constitutional basis for these actions was later acknowledged to have been completely spurious. *Id.* at 25a.

- These pronouncements were memorialized in subsequent correspondence and telephonic communication from the Dairy Conference Chairman to Local 377's officials, instructing Local 377 to decline to negotiate with Borden, and to refer all contract proposals to the Chairman. *Id.* at 24a-25a. Because the Chairman had stated that he was acting under the authority of the IBT's International President, Local 377 sent a letter to that officer requesting relief from the restraints imposed on its ability to negotiate with Borden. No response was received. *Id.* at 26a.

- During the only bargaining session with Borden attended by the Dairy Conference Chairman, he deliberately excluded the representative of Local 377 who was in attendance and unilaterally proposed language that would have prevented TMC from operating the Youngstown plant in the manner it intended. He also refused to permit Local 377 to continue negotiations with Borden. *Id.* at 6a; 27a.

The objective of the IBT was publicly declared at the initial meeting among TMC, Borden and Local 205: to force Borden to sell the Youngstown plant to somebody other than Taylor Milk Company. It accomplished this objective through the novel instrumentality of one of its own local

unions which, if it had been left to pursue its own self-interest would have cooperated with Borden's effort to sell the Youngstown plant. Instead, in order to satisfy its objectives in its primary labor dispute with TMC, the IBT usurped Local 377's bargaining authority and refused to let the Local bargain the necessary labor agreements. Although "not the paradigmatic case of coercion," Appendix at 29a, the IBT's activity directed at Borden – the secondary, neutral employer – was coercive within the meaning of Section 8(b)(4)(ii) of the NLRA.

REASONS FOR DENIAL OF THE WRIT

The IBT's assertion that the lower courts' findings of a violation of Section 8(b)(4) on these facts have "created a new cause of action out of thin air," Petition at 5, simply ignores the well-settled judicial definition of the term "coerce" in Section 8(b)(4) and the wealth of precedent applying that definition. Simply stated, conduct otherwise lawful becomes illegal when undertaken for a secondary purpose. The Petition's failure to address this precedent demonstrates that it is grounded on nothing more than a disagreement with the factual findings of the trial court. The Petition identifies no conflict among the Courts of Appeals, and it fails to articulate a legitimate basis for concluding that the holdings below erroneously applied the principles of Section 8(b)(4) jurisprudence. As is demonstrated below, the decisions in this case are examples of the principled application of settled legal standards to unusual facts. There is no basis for review of the holdings below. The Petition should be denied.

A. Otherwise lawful conduct engaged in for a secondary purpose is coercive and illegal under Section 8(b)(4).

The determination of whether conduct is coercive within the meaning of Section 8(b)(4) is a question of fact. *Brown & Root, Inc. v. Louisiana State AFL-CIO*, 10 F.3d 316, 321 (5th Cir. 1994); *NLRB v. Local 3, IBEW*, 477 F.2d 260, 266 (2d Cir. 1973).[1] Coercion in the 8(b)(4) context has been defined as "non-judicial acts of a compelling or restraining nature, applied by way of concerted self help consisting of a strike, picketing or other economic retaliation or pressure in the background of a labor dispute." *Local Union No. 48, SMWIA v. Hardy Corp.*, 332 F.2d 682, 686 (5th Cir. 1964). This definition has attained wide acceptance. *E.g., Limbach Co. v. Sheet Metal Workers Int'l Assoc. (Limbach II)*, 949 F.2d 1241, 1256 (3d Cir. 1991); *Carrier Air Conditioning Co. v. NLRB*, 547 F.2d 1178, 1191 (2d Cir. 1976), *cert. denied*, 431 U.S. 974 (1977); *Kentucky State District Council of Carpenters*, 308 NLRB 1129, 1130 & n.2 (1992).

Contrary to Petitioners' suggestion, it has long been settled that otherwise lawful conduct is transformed into illicit activity if engaged in for a forbidden secondary object. *NLRB v. Fruit & Vegetable Packers Local 760*, 377 U.S. 58, 68 (1964) ("the prohibition of § 8(b)(4) is keyed to the coercive nature of the conduct, whether it be picketing or otherwise"). "Coercion under section 8(b)(4)(ii)(B) is a broad concept, and the NLRB has not hesitated to include varied forms of

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[1] This alone is a sufficient basis to deny the Writ. Sup.Ct.R. 10 ("A petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law").

economic pressure within the conceptual ambit." *Pye v. Teamsters Local Union No. 22*, 61 F.3d 1013, 1023 (1st Cir. 1995) (citing *International Union, United Mine Workers of America*, 304 NLRB 71, 72-73 (1991) (finding unlawful coercion where union members caused a disturbance at a motel housing striker replacements), *enforced*, 977 F.2d 1470 (D.C. Cir. 1992); *Local No. 742, United Bhd. of Carpenters & Joiners of Am.*, 237 NLRB 564, 565-566 (1978) (union's quid pro quo request for premium pay from neutral employer was coercive); *Service & Maintenance Employees Union, Local 399*, 136 NLRB 431, 436-437 (1962) (union's non-expressive marching around main entrance to sports arena, impeding public access, constituted unlawful coercion). *See also, Pye*, 61 F.3d at 1023 ("affinity group shopping," consisting of large groups of people purchasing small items with bills of large denomination, was coercive); *Limbach II*, 949 F.2d at 1256 ("We hold that the threat of cancelling their bargaining agreement could be a powerful economic weapon in the hands of the unions which, if used for prohibited reasons, constitutes coercion within the meaning of the NLRA"); *Teamsters Local Union No. 25 v. NLRB*, 831 F.2d 1149, 1154 (1st Cir. 1987) (processing of invalid grievances under labor agreement was coercive); *Carrier Air Conditioning*, 547 F.2d at 1191 (threat by union to enforce invalid no-subcontracting clause through grievance procedure was coercive).

In the present case, both the district court and the Court of Appeals concluded that the IBT's conduct was motivated by its secondary objective of coercing Borden to cease doing business with Taylor Milk Company. Appendix at 11a-12a; 30a-31a. For this reason, the decisions below do not implicate the question presented in the Petition – the conduct engaged in by the Petitioners was, in fact, unlawful. That it did not involve picketing does not mean that it was not

coercive, as the jurisprudence summarized above makes plain, and is largely irrelevant to the inquiry of whether it was engaged in for prohibited secondary reasons. IBT has presented no reason in its Petition to revisit this settled area of Section 8(b)(4) jurisprudence.

B. There is no conflict with this Court's explication of Section 8(b)(4) principles.

The Petition argues unpersuasively that the decisions below impermissibly expand the reach of Section 8(b)(4). Petition at 7-11 (citing *NLRB v. Servette, Inc.*, 377 U.S. 46 (1964) and *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Construction Trades Council*, 485 U.S. 568 (1988)). Examination of the decisions relied on to support the argument negates it.

In *Servette*, this Court observed that "[h]armony between [subsection 8(b)(4)] (i) and (ii) is best achieved by construing subsection (i) to prohibit inducement of managers to withhold their services from their employer, and subsection (ii) to condemn an attempt to induce the exercise of discretion only if the inducement would 'threaten, coerce, or restrain' that exercise." 377 U.S. at 54 (footnote omitted). In the footnote, Senator Dirksen was quoted to emphasize that subsection 8(b)(4)(ii) was enacted to "'make[] it an unfair labor practice for a union to try to coerce or threaten an employer directly (but not to persuade or ask him) in order-- * * * To get him to stop doing business with another firm or handling its goods.'" 377 U.S. at 54 n.12 (quoting 105 Cong.Rec. 19849, II Legislative History of the Labor-Management Reporting and Disclosure Act of 1959 1823) (ellipsis in original). Here, although IBT argues that its conduct was intended only to persuade Borden to abandon its

business relationship with TMC and thus should be insulated under subsection 8(b)(4)(i), both the district court and the Court of Appeals were unconvinced. Both found as fact that Petitioners' efforts to frustrate the transaction between Borden and TMC were coercive, and restrained Borden from doing business with Taylor Milk Company. Appendix at 9a-10a; 30a-31a. Hence, far from straying from the *Servette* rationale, the lower courts actually applied it to the facts of this case.

IBT's reliance on *DeBartolo* is equally misplaced. That case established that peaceful, non-picketing handbilling of consumers – a form of persuasive communication protected by the First Amendment – was not coercive, a proposition necessary to avoid "the serious constitutional questions" that would be present if such conduct were intended by Congress to be an unfair labor practice under Section 8(b)(4)(ii). 455 U.S. at 587. The inapplicability of *DeBartolo* to the facts of this case is readily discernible: here, there was no consumer-oriented appeal. Instead, the IBT engaged in a pattern of behind-the-scenes manipulation of its own constitutional provisions and usurped the legitimate legal authority of one of its own constituent local unions in order to apply secondary pressure to Borden, Inc., a neutral employer. There are no constitutional issues raised by IBT's conduct here. *DeBartolo* is inapposite.

Conclusion

In its decision in this case the Court of Appeals noted that "the secondary boycott provisions are directed at preventing a union from leveraging a neutral third party's relationship with a primary employer in order to force the primary employer to accede to the union's demands." Appendix at 11a (citing *Limbach II*, 949 F.2d at 1249-1250).

This is an unremarkable and correct statement of the law. The only remarkable aspect of this case is the creativity demonstrated by the IBT in its successful effort to exert secondary pressure against Borden. But this factual novelty is an insufficient basis on which to grant the petition. No novel legal issues are presented, and there is no conflict with decisions from other Courts of Appeals or with decisions of this Court. The Petition should be denied.

Respectfully submitted,

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